

The terms do not apply, however, to the furnishing of a form of proxy to an association member upon the unsolicited request of such association member, the performance of acts required by § 563b.5(f), or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

(36) *Subscription offering.* The term “subscription offering” refers to the offering of shares of capital stock, through nontransferable subscription rights issued to:

- (i) Eligible account holders as required by § 563b.3(c)(2);
- (ii) Supplemental eligible account holders as required by § 563b.3(c)(4);
- (iii) Members entitled to vote at the meeting called to consider the conversion as required by § 563b.3(c)(5);
- (iv) Directors, officers and employees, as permitted by § 563b.3(d)(2); and
- (v) Eligible account holders, supplemental eligible account holders, and voting members as permitted by § 563b.3(d)(3).

(37) *Subsidiary.* A “subsidiary” of a specified person is an affiliate controlled by such person, directly or indirectly through one or more intermediaries.

(38) *Supplemental eligibility record date.* The term “supplemental eligibility record date” means the supplemental record date for determining supplemental eligible account holders of a converting association required by § 563b.3(c)(4). The date shall be the last day of the calendar quarter preceding the Office’s approval of the application for conversion.

(39) *Supplemental eligible account holder.* The term “supplemental eligible account holder” means any person holding a qualifying deposit, except officers, directors and their associates, as of the supplemental eligibility record date.

(40) *Tax-qualified employee stock benefit plan.* A “tax-qualified employee stock benefit plan” is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan or other plan, which, with its related trust, meets the requirements to be “qualified” under section 401 of the Internal Revenue Code. A “non-tax-qualified employee stock benefit plan”

is any defined benefit plan or defined contribution plan which is not so qualified.

(41) *Underwriter.* The term “underwriter” means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors’ or sellers commission. The term “principal underwriter” means an underwriter in privity of contract with the applicant or other issuer of securities as to which he or she is the underwriter.

(b) Terms defined in other parts of this chapter, when used in this part, shall have the meanings given in such definitions, to the extent such definitions are not inconsistent with the definitions contained in this part, unless the context otherwise requires.

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22732, May 3, 1994; 59 FR 61261, Nov. 30, 1994; 60 FR 66718, Dec. 26, 1995]

Subpart A—Standard Conversions

§ 563b.3 General principles for conversions.

(a) *Applicability of subpart.* The provisions of this subpart shall govern conversions undertaken pursuant to any other subpart of this part unless clearly inapplicable.

(b) *General requirements.* No application for conversion shall be approved by the Office if:

(1) The plan of conversion adopted by the applicant’s board of directors is not in accordance with the provisions of this part;

(2) The conversion would cause the applicant to fail to meet any regulatory capital requirement of § 567.2 of this chapter;

(3) The conversion may result in a taxable reorganization of the applicant under the Internal Revenue Code of 1986, as amended; or

(4) The converted association would not have its accounts insured by the FDIC.

(c) *Required provisions in plan of conversion.* The plan of conversion shall:

(1) Provide that the converting savings association shall issue and sell its capital stock at a total price equal to the estimated *pro forma* market value of such stock in the converted savings association, based on an independent valuation, as provided in § 563b.7.

(2) Provide that each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(4) of this section, one-tenth of one percent of the total offering of shares, or 15 times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting savings association.

(i) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(2), shares shall be allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make his or her total allocation equal to 100 shares.

(ii) Any shares not allocated in accordance with paragraph (c)(2)(i) of this section shall be allocated among the subscribing eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

(3) Nontransferable subscription rights to purchase capital stock received by officers and directors and their associates of the converting savings association based on their increased deposits in the converting association in the one year period preceding the eligibility record date shall be subordinated to all other subscrip-

tions involving the exercise of non-transferable subscription rights to purchase shares pursuant to paragraph (c)(2) of this section.

(4) Provide that, in plans involving an eligibility record date that is more than 15 months prior to the date of the latest amendment to the application for conversion filed prior to the Office's approval, a supplemental eligibility record date be determined whereby each supplemental eligible account holder of the converting association shall receive, without payment, non-transferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(4) of this section, one-tenth of one percent of the total offering of shares, or 15 times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the supplemental eligible account holder and the denominator is the total amount of the qualifying deposits of all supplemental eligible account holders in the converting savings association on the supplemental eligibility record date.

(i) Subscription rights received pursuant to this paragraph (c)(4) shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to paragraphs (c)(2) and (c)(3) of this section.

(ii) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with paragraph (c)(2) of this section shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this paragraph (c)(4) of this section.

(iii) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(4), shares shall be allocated among the subscribing supplemental eligible account holders so as to permit each such supplemental account holder, to the extent possible, to purchase a number of shares sufficient to make his or her total allocation (including the number of shares, if any,

allocated in accordance with paragraph (c)(2) of this section) equal to 100 shares.

(iv) Any shares not allocated in accordance with paragraph (c)(4)(iii) of this section shall be allocated among the subscribing supplemental eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

(5) Provide that association voting members who are not either eligible account holders or supplemental eligible account holders shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(4) of this section, or one-tenth of one percent of the total offering of shares.

(i) Subscription rights received pursuant to this paragraph (c)(5) shall be subordinated to all rights received by eligible account holders and supplemental account holders to purchase shares pursuant to paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(ii) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(5), shares shall be allocated among the subscribing voting members on such equitable basis as may be provided in the plan of conversion.

(6) Provide that any shares of the converting savings association not sold to persons with subscription rights shall be sold either in a public offering through an underwriter or directly by the converting savings association in a direct community offering, subject to the applicant demonstrating to the Office the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. Such conditions shall include, but not be limited to:

(i) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(4) of this section, a condition limiting purchases in the public offering or the direct community offering by any person together with any associate or group of persons acting in concert to not more than five

percent (5%) of the total offering of shares, except that any one or more tax-qualified employee benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares. Shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with other shares purchased directly by or otherwise attributable to that person.

(ii) A condition requiring that orders for stock in any public offering or direct community offering shall first be filled up to a maximum of two percent of the conversion stock and thereafter remaining shares shall be allocated on an equal number of shares per order basis until all orders have been filled.

(iii) A condition requiring the stock to be offered and sold in the public offering or the direct community offering to be offered and sold in a manner that will achieve the widest distribution of the stock.

(iv) A condition that any direct community offering by the converting savings association shall give a preference to natural persons residing in the association's local community.

(7) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(4) of this section, provide that the total shares that any person and any associate or group of persons acting in concert may subscribe for or purchase in the conversion shall not exceed five percent (5%) of the total offering of shares, except that any one or more tax-qualified employee benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares. Shares held by one or more tax-qualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributable to that person.

(8) Provide that the officers and directors of the converting association and their associates may purchase in the conversion, up to thirty-five percent (35%) of the total offering of shares of the converting association provided that the converting association has less than \$50 million in total assets, and up to twenty-five percent (25%) in the total offering of shares if

the converting association has more than \$500 million in total assets. If the converting association has between \$50 million and \$500 million, in total assets, the maximum percentage shall be equal to thirty-five percent (35%) minus one percent (1%) multiplied by the quotient of the total assets less \$50 million divided by \$45 million. For example, for a converting association with \$275 million in total assets, the percentage will be thirty percent (30%), calculated as thirty-five percent (35%) minus one percent (1%) multiplied by the quotient of \$275 million less \$50 million, or \$225 million, divided by \$45 million, which equals five, or five percent (5%), which when subtracted leaves a difference of thirty percent (30%). In calculating the number of shares which may be purchased, any shares attributable to the officers and directors and their associates but held by one or more tax-qualified employee stock benefit plans shall not be included. In the case of merger conversions undertaken pursuant to § 563b.10, any shares owned prior to the merger conversion by officers, directors, and their associates shall not be included in calculating the aggregate amount which may be purchased by such persons.

(9) Provide that an officer or director, or his or her associates, shall not purchase, without the prior written approval of the Office, the capital stock of the converted savings association except from a broker or dealer registered with the Securities and Exchange Commission, for a period of three years following the date of the conversion; except that, this paragraph (c)(9) shall not apply to:

(i) Negotiated transactions involving more than one percent (1%) of the outstanding capital stock of the converted savings association; or

(ii) Purchases of stock made by and held by any one or more tax-qualified or non-tax-qualified employee stock benefit plan which may be attributable to individual officers or directors.

(10) Provide that the sales price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with § 563b.7 of this part; and specify the underwriting and/or other marketing ar-

rangements to be made to ensure the sale of all shares not sold to persons with subscription rights.

(11) Establish a time period within which the conversion must be completed prior to termination. The time period shall be not more than 24 months from the date the association members approve the plan of conversion and shall not be extended by the converting savings association or the Office.

(12) Provide that each savings account holder of the converting savings association shall receive, without payment, a withdrawable savings account or accounts in the converted savings association equal in withdrawable amount to the withdrawal value of such account holder's savings account or accounts in the converting savings association.

(13) Provide for the establishment and maintenance of a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in the event of a subsequent complete liquidation of the converted savings association, in accordance with the provisions of paragraph (f) of this section. An association converting to a federally chartered stock savings and loan association or savings bank shall include in its charter the following section:

Liquidation account. Pursuant to the requirements of the Office's regulations (12 CFR Part 563b) the association shall establish and maintain a liquidation account for the benefit of its savings account holders as of _____ ("eligible savers"). In the event of a complete liquidation of the association, it shall comply with such regulations with respect to the amount and the priorities on liquidation of each of the association's eligible savers' inchoate interest in the liquidation account, to the extent it is still in existence: *Provided*, That an eligible saver's inchoate interest in the liquidation account shall not entitle such eligible saver to any voting rights at meetings of the association's stockholders.

(14) Provide for an eligibility record date, which shall be not less than one year prior to the date of adoption of the plan of conversion by the converting savings association's board of directors.

(15) Provide that the holders of the capital stock of the converted savings

association shall have exclusive voting rights, unless in the case of a State-chartered converted savings association State law requires savings account holders and/or borrowers of the converted savings association to have voting rights, in which case the charter of the converted savings association shall:

(i) Limit such voting rights to the minimum required by State law, and

(ii) Provide for the management of the converted savings association to solicit proxies from such savings account holders and/or borrowers in the same manner as it solicits proxies from its shareholders.

(16) Provide that the plan of conversion adopted by the applicant's board of directors may be substantively amended by such board of directors as a result of comments from regulatory authorities or otherwise prior to the solicitation of proxies from members to vote on the plan and at any time thereafter with the concurrence of the Office; and that the conversion may be terminated by such board of directors at any time prior to the meeting of members called to consider the plan of conversion and at any time thereafter with the concurrence of the Office.

(17) Provide that all shares of capital stock purchased by directors and officers on original issue in the conversion either directly from the savings association (by subscription or otherwise) or from an underwriter shall be subject to the restriction that the shares shall not be sold for a period of not less than one year following the date of purchase, except in the event of death of the director or officer.

(18) Provide that, in connection with shares of capital stock subject to restriction on sale for a period of time:

(i) Each certificate for such stock shall bear a legend giving appropriate notice of such restriction;

(ii) Appropriate instructions shall be issued to the transfer agent for the converted savings association's capital stock with respect to applicable restrictions on transfer of any such restricted stock; and

(iii) Any shares issued as a stock dividend, stock split or otherwise with respect to any such restricted stock shall

be subject to the same restrictions as may apply to such restricted stock.

(19) Provide that the converting savings association shall:

(i) Promptly following the conversion register the securities issued in connection therewith pursuant to the Securities Exchange Act of 1934 and undertake not to deregister such securities for a period of three years thereafter;

(ii) Use its best efforts to encourage and assist a market maker to establish and maintain a market for the securities issued in connection with the conversion; and

(iii) Use its best efforts to list those shares issued in connection with the conversion on a national or regional securities exchange or on the NASDAQ quotation system.

(20) Provide that the expenses incurred in the conversion shall be reasonable.

(21) Contain no provision which the Office shall determine to be inequitable or detrimental to the applicant, its savings account holders or other savings associations or to be contrary to the public interest.

(22) Provide that the converting savings association shall not loan funds or otherwise extend credit to any person to purchase the capital stock of the association.

(23) Provide that eligible account holders with subscription rights have first priority to purchase conversion stock, tax-qualified employee stock benefit plans have second priority, supplemental eligible account holders have third priority, and other voting members who have subscription rights have fourth priority. If the final conversion stock valuation range exceeds the maximum conversion stock offering range, up to ten percent of the total offering of shares may be sold to the tax-qualified employee stock benefit plans. Furthermore, if the ESOP is not able to purchase conversion stock, the ESOP or any other tax-qualified plan may purchase shares in the open market or utilize authorized but unissued shares only with prior OTS approval; and disclosure must be made in the conversion stock offering materials of the potential open market purchases or use of authorized but unissued shares to fund the ESOP and

its effects on the association and its shareholders.

(24) Provide that the association may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the association to fail to meet its regulatory capital requirement.

(d) *Optional provisions in plan of conversion.* The plan of conversion may provide any or all of the following:

(1) That the converting savings association may commence the direct community offering or the public offering, or both, concurrently with or at any time during the subscription offering. The subscription offering may be commenced concurrently with or at any time after the mailing to association members pursuant to § 563b.6(c) of this part of the proxy statement authorized for use by the Office. The subscription offering may be closed before the meeting of the association members held to vote on the plan of conversion, provided that the offer and sale of the capital stock shall be conditioned upon the approval of the plan of conversion by the association members as provided in § 563b.6.

(2) That directors, officers and employees of the converting savings association shall receive without payment nontransferable subscription rights to purchase shares of capital stock that are available after satisfying the subscriptions of eligible account holders, supplemental eligible account holders, voting members, and tax-qualified employee stock benefit plans provided for under paragraphs (c)(2), (c)(4), (c)(5), and (c)(23) of this section, subject to the following conditions:

(i) The total number of shares which may be purchased under this paragraph (d)(2) shall not exceed 25 percent of the total number of shares to be issued in the case of a converting savings association with total assets of less than \$50 million or 15 percent in the case of a converting savings association with total assets of \$500 million or more; in the case of a converting savings association with total assets of \$50 million or more but less than \$500 million, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for ex-

ample, 20 percent in the case of a converting savings association with total assets of approximately \$275 million); and

(ii) The shares shall be allocated among directors, officers, and employees on an equitable basis such as by giving weight to period of service, compensation and position, subject to a reasonable limitation on the amount of shares which may be purchased by any person associate thereof, or group of affiliated persons or group of persons otherwise acting in concert.

(3) That any account holder receiving rights to purchase stock in the subscription offering, shall also receive, without payment, non-transferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that such shares are available after satisfying the subscriptions provided for under paragraphs (c)(2), (c)(4), (c)(5), and (c)(23) of this section, subject to such conditions as may be provided in the plan of conversion. In the event of an oversubscription for such additional shares, the shares available shall be allocated among the subscribing eligible account holders, supplemental eligible account holders and voting members on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion. Where possible such subscriptions shall be allocated in such a manner that total purchases by eligible account holders, supplemental eligible account holders, and voting members shall be rounded to the nearest 100 shares.

(4) That purchases in the public offering or in the direct community offering by any person together with any associate or group of persons acting in concert shall be limited to less than ten percent (10%) of the total offering of shares. The percentage amount by which any order for conversion stock exceeds 5% of the total offering of shares shall be aggregated with the percentage amounts by which all other orders for conversion stock exceed 5% of the total offering of shares. The aggregate amount shall not exceed 10% of the total offering of shares, except that this limitation shall not apply to the

purchases of the tax-qualified employee stock benefit plans.

(5) That the converting savings association may require association members to return by a reasonable date certain a postage-paid written communication provided by the converting savings association requesting receipt of a subscription offering circular, or a preliminary or final offering circular in an offering pursuant to paragraph (d)(11) of this section, in order to be entitled to receive an offering circular from the converting savings association: *Provided*, That the subscription offering or the offering pursuant to paragraph (d)(11) of this section shall not be closed until the expiration of thirty days after the mailing by the converting savings association to association members of the postage-paid written communication. If the subscription offering or the offering pursuant to paragraph (d)(11) of this section is not commenced within 45 days after the meeting of association members, the converting savings association that has adopted this optional provision shall transmit no more than 30 days prior to the commencement of the subscription offering or the offering pursuant to paragraph (d)(11) of this section to each association member who had been furnished with proxy soliciting materials, written notice of the commencement of the offering, which notice shall state that the converting savings association is not required to furnish an offering circular to an association member unless the association member returns by a reasonable date certain the postage-paid written communication provided by the converting savings association requesting receipt of an offering circular.

(6) That the converting savings association may require eligible account holders and supplemental eligible account holders who are not voting members pursuant to § 563b.6(d) of this part to return by a reasonable date certain a postage-paid written communication provided by the converting savings association requesting the receipt of a subscription offering circular, or a preliminary or final offering circular in an offering pursuant to paragraph (d)(11) of this section, in order to be entitled to receive an offering circular from the

converting savings association: *Provided*, That the subscription offering or the offering pursuant to paragraph (d)(11) of this section shall not be closed until the expiration of thirty days after the mailing by the converting savings association to the non-voting eligible account holders and supplemental eligible account holders of the postage-paid written communication. If the subscription offering or the offering pursuant to paragraph (d)(11) of this section is not commenced within 45 days after the meeting of association members, the converting savings association that has adopted this optional provision shall transmit no more than 30 days prior to the commencement of the subscription offering or the offering pursuant to paragraph (d)(11) of this section to each eligible account holder and supplemental account holder who had been furnished with a notice pursuant to paragraph (d)(11) of this section written notice of the commencement of the offering, which notice shall state that the converting savings association is not required to furnish an offering circular to a non-voting eligible account holder or supplemental eligible account holder unless the eligible account holder or supplemental eligible account holder returns by a reasonable date certain the postage-paid written communication provided by the converting savings association requesting receipt of an offering circular.

(7) That any insignificant residue of shares of the converting savings association not sold in the subscription offering or in a public offering referred to in paragraph (c)(6) of this section may be sold in such other manner as provided in the plan with the Office's approval.

(8) That the number of shares which any person, or group of persons affiliated with each other or otherwise acting in concert, may subscribe for in the subscription offering may be made subject to a limit of not less than one percent of the total offering of shares.

(9) That any person exercising subscription rights to purchase capital stock shall be required to purchase a minimum of up to 25 shares to the extent such shares are available (but the

aggregate price for any minimum share purchase shall not exceed \$500).

(10) That the converted savings association shall issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock and long-term warrants or other equity securities, in which event any reference in the provisions of this part to capital stock shall apply to such units of equity securities unless the context otherwise requires.

(11) That, instead of a separate subscription offering, all subscription rights issued in connection with the conversion shall be exercisable by delivery of properly completed and executed order forms to the underwriters or selling group for the public offering or pursuant to any other procedure, subject to the applicant demonstrating to the Office the feasibility of the method of exercising such rights and to such conditions as shall be provided in the plan of conversion. Such conditions shall include, but not be limited to, a condition requiring that orders for stock in the public offering or direct community offering shall first be filled, in the order of priority set forth in this section, by orders of persons exercising subscription rights.

(12) That the offering of stock to be sold in the subscription offering may give a preference to eligible account holders, supplemental eligible account holders, and other voting members residing in the association's local community.

(13) That the Office may approve such other equitable provisions as are necessary to avert imminent injury to the converting savings association.

(e) *Determination of amount of qualifying deposit; predecessor and successor accounts.* (1) Unless otherwise provided in the plan of conversion, for the purposes of this section, the amount of the qualifying deposit of an eligible account holder or supplemental eligible account holder shall be the total of the deposit balances in the eligible account holder's or supplemental eligible account holder's savings accounts in the converting savings association as of the close of business on the eligibility record date or supplemental eligibility record date. However, the plan of conversion may provide that any savings

accounts with total deposit balances of less than \$50 (or any lesser amount) shall not constitute a qualifying deposit.

(2) As used in this section, the term "savings account" includes a predecessor or successor account of a given savings account which is held only in the same right and capacity and on the same terms and conditions as the given savings account. However, the plan of conversion may provide for lesser requirements for consideration as a predecessor or successor account.

(f) *Liquidation account.* (1) Each converted savings association shall, at the time of conversion, establish a liquidation account in an amount equal to the amount of net worth of the converting savings association as of the latest practicable date prior to conversion. For the purposes of this paragraph, the savings association shall use the net worth figure no later than that set forth in its latest statement of financial condition contained in the final offering circular. The function of the liquidation account is to establish a priority on liquidation and, except as provided in paragraph (g)(2) of this section, the existence of the liquidation account shall not operate to restrict the use or application of any of the net worth accounts of the converted savings association.

(2) The liquidation account shall be maintained by the converted savings association for the benefit of eligible account holders and supplemental eligible account holders who maintain their savings accounts in such association. Each such eligible account holder and supplemental eligible account holder shall, with respect to each savings account held, have a related inchoate interest in a portion of the liquidation account balance ("sub-account").

(3) In the event of a complete liquidation of the converted savings association (and only in such event), each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for savings accounts held, before any liquidation distribution may be made with respect

to capital at the time of the conversion in exchange for the surrender of mutual capital certificates issued by the association prior to conversion. A merger, consolidation, sale of bulk assets, or similar combination or transaction with another SAIF-insured savings association is not considered a complete liquidation for these purposes, and in such a transaction the liquidation account would be assumed by the surviving association. Preferred stock issued in exchange for mutual capital certificates may receive distributions in liquidation prior to distribution from the liquidation account to the holders of the mutual capital certificates that would have been entitled to priority over the residual rights of depositors had the association not been converted as of the date of liquidation.

(4) The initial subaccount balance for a savings account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposits in such savings account on the eligibility record date and/or the supplemental eligibility record date and the denominator is the total amount of qualifying deposits of all eligible account holders and supplemental eligible account holders in the converting savings association on such dates. For savings accounts in existence at both dates, separate subaccounts shall be determined on the basis of the qualifying deposits in such saving accounts on such record dates. Such initial subaccount balances shall not be increased, and it shall be subject to downward adjustment as provided in paragraph (f)(5) of this section.

(5) If the deposit balance in any savings account of an eligible account holder or supplemental eligible account holder at the close of business on any annual closing date subsequent to the respective record dates is less than the lesser of:

(i) The deposit balance in such savings account at the close of business on any other annual closing date subsequent to the eligibility record date or supplemental eligibility record date; or

(ii) The amount of qualifying deposit as of the eligibility record date or the supplemental eligibility record date, the subaccount balance for such savings account shall be adjusted by reducing such subaccount balance in an amount proportionate to the reduction in such deposit balance.

In the event of such a downward adjustment, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit balance of the related savings account. The converted association shall not be required to recompute the liquidation account and subaccount balances provided the converted association maintains records sufficient to make necessary computations in the event of a complete liquidation or such other events as may require a computation of the balance of the liquidation account. The liquidation subaccount of an account holder shall be maintained for as long as the account holder maintains an account with the same Social Security number.

(g) *Restrictions on repurchase of stock; payment of dividends; and use of stock option and management or employee stock benefit plans.* Each savings association that converts pursuant to this part shall be subject to the following conditions:

(1) No converted savings association may, for a period of one year from the date of the completion of the conversion, repurchase any of its capital stock from any person, except that this restriction shall not apply to:

(i) A repurchase, on a *pro rata* basis, pursuant to an offer approved by OTS and made to all shareholders of such association;

(ii) A repurchase of qualifying shares of a director; or

(iii) A repurchase approved by OTS under paragraph (g)(3) of this section.

(2) No converted association shall declare or pay a dividend on, or repurchase any of, its capital stock if the effect thereof would cause the regulatory capital of the converted association to be reduced below the amount required for its liquidation account. Any dividend declared or paid on, or repurchase of, a converted association's capital stock also shall be in compliance with §§ 563.140-563.146 of this chapter.

(3) A savings association that is subject to paragraph (g)(1) of this section may not repurchase its capital stock within one year following its conversion to stock form, except that open market stock repurchases of up to five percent of its outstanding capital stock may occur during the first year after the conversion where extraordinary circumstances exist. The savings association must establish compelling and valid business purposes for the repurchases, to the satisfaction of the OTS. The savings association must file a notice with the Regional Director, with a copy to the Office of Examination and Supervision, at least ten days before commencement of the proposed repurchase. The notice must describe the proposed repurchase program and the effects of the proposed repurchases on the savings association's regulatory capital. OTS will not object to the proposed repurchase program if:

(i) The repurchase does not adversely affect the savings association's financial condition;

(ii) The savings association submits sufficient information to evaluate the repurchase program;

(iii) The savings association demonstrates extraordinary circumstances and a compelling and valid business purpose for the repurchase program consistent with the savings association's business plan; or

(iv) The repurchase program would not be contrary to other applicable regulations.

(4) Use of Stock Option and Management or Employee Stock Benefit Plans. No converted savings association shall, for a one year period from the date of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified plan complying with (c)(6) of this section, unless each of the following requirements are met:

(i) Each of the plans was fully disclosed in the proxy soliciting and conversion stock offering materials;

(ii) For stock option plans, the total number of shares of common stock for which options may be granted does not exceed ten percent of the amount of shares issued in the conversion;

(iii) For management or employee stock benefit plans, the aggregate

amount of such plans shall not exceed three percent of the amount of shares issued in the conversion;

(iv) The aggregate amount of all shares obtained by a tax-qualified employee stock benefit plan(s) in the conversion, pursuant to (c)(6) of this section, or within one year following the conversion, and all the shares in a management or employee stock benefit plan, pursuant to paragraph (g)(4)(iii) of this section, shall not exceed ten percent of the total amount of shares issued in the conversion;

(v) Associations that have in excess of ten percent tangible capital following the conversion, may be granted, on a case by case basis, approval to establish a management or employee stock benefit plan pursuant to paragraph (g)(4)(iii) of this section in an amount up to four percent of the amount of the shares issued in the conversion, and an aggregate total of up to twelve percent for all plans established pursuant to paragraph (g)(4)(iv) of this section;

(vi) No individual shall receive more than twenty-five percent of the shares of any plan and directors who are not employees of the association shall not receive more than five percent of the stock individually, or thirty percent in the aggregate, of any plan;

(vii) All such plans, prior to establishment and implementation, are approved by the holders of a majority of the total votes eligible to be cast at any duly called meeting of shareholders of the association or its holding company, either annual or special, to be held not earlier than six months after completion of the conversion;

(viii) In the case of a savings association subsidiary of a mutual holding company, all such plans, prior to establishment and implementation, are approved by the holders (other than its parent mutual holding company) of a majority of the total votes eligible to be cast, at any duly called meeting of shareholders, either annual or special, to be held no earlier than six months after completion of the conversion;

(ix) For stock option plans, stock options are granted at no less than the market price at which the stock is trading at the time of grant;

(x) For management or employee stock benefit plans, no conversion stock is used to fund the plans;

(xi) The plans subject to this section must comply with the terms and amounts specified in paragraph (g)(4) of this section;

(xii) The plans subject to this section shall begin vesting no earlier than one year from the date the plans are approved by shareholders, shall not vest at a rate in excess of 20% a year, and shall not provide for accelerated vesting except in the case of disability or death;

(xiii) Disclosure in all proxy and related material distributed to shareholders in connection with the meeting at which the stock option plans and management stock benefit plans will be voted shall state that the plans comply with OTS regulations, that the OTS in no way endorses or approves the plans; and no written or oral representation to the contrary shall be made; and

(xiv) No later than five calendar days from the date of shareholder approval of any stock option or management benefit plans, the institution shall file with the OTS a copy of the approved plans and written certification that the plans approved by the shareholders are the same plans filed with and disclosed in the proxy materials.

(h) *Manipulative and deceptive devices.* In the offer, sale or purchase of securities issued incident to its conversion, no savings association, or any director, officer, attorney agent or employee thereof, shall:

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

(i) *Acquisition of the securities of converting and converted savings associations—(1) Prohibited transfers.* Prior to the completion of a conversion, no person shall transfer, or enter into any

agreement or understanding to transfer, the legal or beneficial ownership of conversion subscription rights, or the underlying securities to the account of another.

(2) *Prohibition of offers and certain acquisitions.* Prior to the completion of a conversion, no person shall make any offer, or any announcement of an offer, for any security of the converting savings association issued in connection with the conversion nor shall any person knowingly acquire securities of the converted savings association issued in connection with the conversion in excess of the maximum purchase limitations established in the association's approved plan of conversion pursuant to paragraph (c)(7) or (d)(4) of this section.

(3) *Prohibition on offers to acquire and acquisitions of stock for three years following conversion.* (i) For a period of three years following the date of the completion of the conversion, no person shall, directly or indirectly, offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of a savings association converted in accordance with the provisions of this part 563b, without the prior written approval of the Office. Where any person, directly or indirectly, acquires beneficial ownership of more than ten percent of any class of any equity security of a savings association converted in accordance with part 563b, without the prior written approval of the Office as required by this section, the securities beneficially owned by such person in excess of ten percent shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matter submitted to the stockholders for a vote. For the purposes of this section, a person shall be deemed to have acquired beneficial ownership of more than ten percent (10%) of a class of equity security of a savings association where the person holds any combination of stock or revocable or irrevocable proxies of the association under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 574.4(a) and 574.4(b) of this chapter. In obtaining the prior

written approval of the OTS under this paragraph (i), the criteria for approval under paragraph (i)(5) of this section should be addressed, if applicable, in the application, notice, or rebuttal required by part 574 of this chapter for the acquisition of stock of a savings association, as set forth in § 574.6(j) of this chapter.

(ii) A conversion shall be deemed completed on the date all of the converting association's conversion stock was sold.

(iii) An acquisition of shares shall be presumed to have been made if the acquiror entered into a binding written agreement for the transfer of shares. An offer shall be deemed made when communicated.

(4) *Exceptions.* (i) Paragraphs (i)(1) and (i)(2) of this section shall not apply to a transfer, agreement, or understanding to transfer, offer, or announcement of an offer or intent to make an offer which:

(A) Pertains only to securities to be purchased pursuant to paragraph (c)(6), (d)(7), or (d)(12); and

(B) Has the prior written approval of the Office.

(ii) Paragraphs (i)(2) and (i)(3) of this section shall not apply to any offer with a view toward public resale made exclusively to the association or to the underwriters or a selling group acting on its behalf.

(iii) Unless made applicable by the Office by prior advice in writing, the restriction contained in paragraph (i)(3) of this section shall not apply to any offer or announcement of an offer which if consummated would result in the acquisition by a person, together with all other acquisitions by the person of the same class of securities during the preceding 12-month period, of not more than one percent of the class of securities.

(iv) The restriction contained in paragraph (i)(3) of this section shall not apply to any offer to acquire or acquisition of beneficial ownership of more than ten percent of the common stock of a savings association by a corporation whose ownership is or will be substantially the same as the ownership of the savings association, provided that the offer or acquisition is

made more than one year following the date of completion of the conversion.

(v) Paragraphs (i)(1), (i)(2) and (i)(3) of this section shall not apply to the acquisition of securities of an association or holding company thereof by any one or more tax-qualified employee stock benefit plans of such association or holding company, provided that, the plan or plans do not have beneficial ownership in the aggregate of more than twenty-five percent (25%) of any class of equity security of the converted association or holding company.

(vi) No application under paragraph (i)(3)(i) of this section generally shall be required for any proposed acquisition that requires prior approval of, or clearance by, the OTS under 12 CFR part 574 *provided* that the application required to be filed pursuant to part 574 of this chapter addresses in specific detail how the proposed transaction will comply with the criteria for approval under paragraph (i)(5) of this section, and the proposed acquisition is not opposed by the recently converted association subject to paragraph (i)(3)(i) of this section. Where, pursuant to this paragraph (i)(4)(vi), no separate application under paragraph (i)(3)(i) of this section is required, the prohibition on offers to acquire equity securities contained in paragraph (i)(3)(i) of this section shall not apply.

(5) *Criteria for approval.* The Office may deny an application involving an offer or acquisition of any security or proxies to vote securities of a converted association submitted under paragraph (i)(3) of this section if it finds that the proposed acquisition:

(i) Would frustrate the purposes of the provisions of this part 563b;

(ii) Would be manipulative or deceptive;

(iii) Would subvert the fairness of the conversion;

(iv) Would be likely to result in injury to the association;

(v) Would not be consistent with economical home financing;

(vi) Would otherwise be violative of law or regulation; or

(vii) Would not contribute to the prudent deployment of the association's conversion proceeds.

(6) *Optional charter provisions.* The plan of conversion may provide for the

charter of the converted savings association to include, for a specified period of not more than five years following the date of the completion of the conversion, any or all of the provisions of § 552.4(b)(8) of this chapter: *Provided*, that if the savings association is converting to a state-chartered stock association, it shall include in its application an opinion of counsel independent of the association that such charter provisions are permissible under the law of the applicable state. At any annual or special meeting of its shareholders, a converted state-chartered savings association may adopt any charter provision regarding the acquisition by any person or persons of its equity securities that would be permitted to be adopted by a savings association chartered by the state in which the converted savings association is chartered, and a converted federally-chartered savings association may adopt any such charter provision permitted under § 552.4 of this chapter.

(7) *Definitions.* (i) The term *person* includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of securities of a savings association.

(ii) The term *offer* includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security, for value: *Provided*, That for the purpose of this § 563b.3(i), the term “offer” shall not include:

(A) Inquiries directed solely to the management of a savings association and not intended to be communicated to stockholders, designed to elicit an indication of management’s receptivity to the basic structure of a potential acquisition with respect to the amount of securities, manner of acquisition and formula for determining price, or

(B) Nonbinding expressions of understanding or letters of intent with the management of a savings association regarding the basic structure of a potential acquisition with respect to the amount of securities, manner of acqui-

sition, and formula for determining price.

(iii) The term *acquire* includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

(iv) The term *security* includes non-transferable subscription rights issued pursuant to a plan of conversion as well as a *security* as defined in 15 U.S.C. 78c(2)(10).

(j) *Priority of regulations.* The provisions of this part shall supersede all inconsistent charter and bylaw provisions of federally-chartered savings associations converting to the stock form.

[54 FR 49596, Nov. 30, 1989, as amended at 55 FR 13516, Apr. 11, 1990; 55 FR 27197, July 2, 1990; 56 FR 59867, Nov. 26, 1991; 57 FR 14347, Apr. 20, 1992; 58 FR 4314, Jan. 14, 1993; 59 FR 22733, May 3, 1994; 59 FR 61261, Nov. 30, 1994; 60 FR 66718, Dec. 26, 1995; 64 FR 2810, Jan. 19, 1999; 65 FR 43090, July 12, 2000]

§ 563b.4 Notice of filing; public statements; confidentiality.

(a) Information prior to approval of plan of conversion. (1) A savings association which is considering converting pursuant to this part and its directors, officers and employees shall keep such consideration in the strictest confidence and shall only discuss the potential conversion as would be consistent with the need to prepare information for filing an application for conversion. Should this confidence be breached the Office may require remedial measures including:

(i) A public statement by the association that its board of directors is currently considering converting pursuant to this part;

(ii) Providing for an eligibility record date which shall be as of such a date prior to the adoption of the plan by the converting savings association’s board of directors as to assure the equitability of the conversion;

(iii) Limitation of the subscription rights of any person violating or aiding the violation of this section to an amount deemed appropriate by the Office; and

(iv) Any other actions the Office may deem appropriate and necessary to assure the fairness and equitability of the conversion.